

REMARKS

Claims 1-113 are pending in the present application.

The Examiner alleges that the presently pending claims are two distinct inventions (Group I – A system and method for adaptively controlling sensitivity, on a pixel-by-pixel basis, of a digital imager & Group II – A system and method for determining transition points between a plurality of discrete points) because the two inventions are related as subcombinations of a single combination. Moreover, the Examiner alleges that the presently pending claims of Group I are directed to three distinct species, as illustrated in Figure 11, Figure 12, and Figure 15. These assertions by the Examiner are respectfully traversed for the following reasons.

The Examiner has failed to provide a prima facie case that the presently pending claims are directed to distinct subcombinations relating to a combination. The only reason that the Examiner gives for support of the Restriction Requirement between Group I and Group II is that Group I has separate utility for controlling sensitivity for a digital imager. The Examiner has failed to demonstrate that the subcombinations can be separately usable. A mere allegation of one subcombination having separate utility does meet the burden of showing that the subcombinations can be separately usable. Thus, the Examiner has failed to provide a prima facie case that the presently pending claims are directed to distinct subcombinations.

Notwithstanding, the Examiner's failure to provide a prima facie case that the presently pending claims are directed to distinct subcombinations, the Applicants, to expedite the prosecution of the present application, elect, with traverse, the claims drawn to Group I.

The Examiner has further subjected the claims of Group I to an election of species requirement, alleging that these claims are drawn to three distinct species, as illustrated in Figure 11, Figure 12, and Figure 15. With respect to this election of species requirement, the Examiner has failed to provide a prima facie case that the three distinct species, as illustrated in Figure 11, Figure 12, and Figure 15, are patentably distinct.

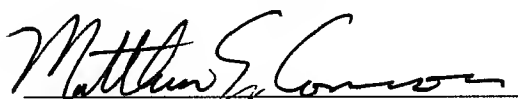
Notwithstanding, the Examiner's failure to provide a prima facie case that the three distinct species, as illustrated in Figure 11, Figure 12, and Figure 15, are patentably distinct, the Applicants, to expedite the prosecution of the present application, elect, with traverse, claims 1-

36, 59-91, and 96-108. The Applicants respectfully submit that claims 1-36, 59-91, and 96-108 read upon the alleged species illustrated by Figure 11.

In summary, the Applicants, elect, **with traverse**, claims 1-36, 59-91, and 96-108, drawn to Group I and which read upon the alleged species illustrated in Figure 11 of the originally filed specification.

Accordingly, in view of all the reasons set forth above, the Examiner is respectfully requested to reconsider and withdraw the restriction requirement. Moreover, in view of all the reasons set forth above, the Examiner is respectfully requested to reconsider and withdraw the election of species requirement. Also, an early indication of allowability is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew E. Connors", written over a horizontal line.

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